



STATE OF MAINE
PUBLIC UTILITIES COMMISSION
242 STATE STREET
18 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0018

THOMAS L. WELCH

WILLIAM M. NUGENT
STEPHEN L. DIAMOND

EX PARTE OR LATE FILED February 5, 2003

ORIGINAL

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street SW, Suite TW-8B201
Washington, DC 20554

The Honorable Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street SW, Suite TW-8B302
Washington, DC 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street SW, Suite TW-8B204
Washington, DC 20554

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street SW, Suite TW-8C302
Washington, DC 20554

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street SW, Suite TW-8B115
Washington, DC 20554

RE: Notice of Written Ex Parte Comment – Request for Review or
Waiver of a Decision of the SLD by the Maine State Library (MSLN
2 Consortium – Billed Entity Number 217380) CC Docket No. 96-
45; 97-21.

Dear Chairman and Commissioners:

I would like to call your attention to a recent Request for Review or Waiver filed with the Federal Communications Commission that has the potential to greatly impact the State of Maine. The Maine State Library and Maine's Department of Education have asked the Commission to review a decision of the School and Library Division (SLD). In December 2002, the SLD notified Maine that its consortium E-rate application, representing virtually every school and library in Maine, had been filed outside the FY 2002 window. We are asking the Commission to reverse the SLD's decision, and permit Maine's application to be considered within the FY2002 window. Our request is based first on our belief that, contrary to the SLD's assertion, the filing was made on time. Indeed, there is no dispute that the substance of the application was received by the SLD electronically well before the deadline. The dispute involves only the date on which the mailed portions of the application (i.e. the signature and description of services) were "mailed;" these portions were deposited to Federal Express prior



PRINTED ON RECYCLED PAPER

No. of Copies rec'd _____
List ABOVE

to the January 17, 2002 11:59 p.m. deadline, but apparently because the delivery was not processed by Federal Express until January 18, the SLD asserts that the deadline was missed.

Even if the SLD's rules could be read to permit rejection of Maine's application, the Commission should exercise its authority to avoid what would be, in this case, a clear miscarriage of justice. In particular, Maine's application was filed "close to the wire" only because the SLD did not have in place (at the time of the preparation of this filing) a way to deal effectively with, and provide effective guidance to, "consortium filers." These large filings, because they are consolidated at the State level, should provide efficiencies to SLD and be encouraged, not punished by the overzealous and inflexible interpretation of procedural rules.

Maine has in place what we view to be a fairly simple system for Maine's schools and libraries to receive financial support for Internet connections and access. Maine's consortium application at issue in this Request seeks Federal E-rate support for only these services. Maine went out to bid for a provider of Internet service for all of Maine's schools and libraries. Maine is a large, rural state with a widely dispersed population, much of it low-income and fairly isolated. By pooling our purchasing power, and by providing assistance at the State level, we were able to obtain a number of bids at reasonable prices. Verizon provides Internet access (in conjunction with 22 independent telephone companies). The University of Maine System provides the Internet service.¹ To receive Federal E-rate support for this service, the Maine State Library obtains a letter of agency from each school or library authorizing the filing of an application on *its* behalf. One discount for each service is calculated for all schools. This process, although time consuming at the State level, eases the burden on schools and libraries and encourages all schools to participate.

When Maine decided to go this route for the first time in Federal E-rate Year 2001, Maine assumed such consortium applications would be welcomed by SLD. Instead of 1000 individual applications, one application could be processed. We were disappointed by the SLD's reaction. SLD did not even look at our application, filed in January 2001, until the Fall of 2001. Our Maine administrator received additional requests for clarification of various aspects of the application in December 2001 and January 2002, during the time when she was trying to file the 2002 application. Even with this activity, Maine did not receive notification of its 2001 award until May 31, 2002, 16 months after the application was filed. This was despite the fact that all 2001 year awards were to have been made by April. No explanation was ever provided as to the delay but such delay had severe consequences. First, Maine had to fully pay its bills to

¹ Currently Internet service costs \$150 per month per site. T-1 service costs \$556 per month and 56 kbps service costs \$80 per month.

Verizon. Going through vendor reimbursement process (BEAR), we did not receive our Federal funds until October 2002. Second, not receiving the approval until May 2002 meant that when our administrator filed the 2002 application (which was virtually identical to 2001 application) she did not have a previously approved application on file. This meant she had to mail a certification page with her signature to SLD. This is the document that was allegedly filed late.

The entire process creates an untenable situation for large consortium filers. As described in Maine's Request, SLD's on-line application process has not been workable for consortium filers (Request at 3). Maine, along with other states, has brought this situation to the Commission's attention in a number of forums. In April 2002, we filed comments in the FCC's rulemaking (In the Matter of Schools and Libraries, Docket No. CC 02-06) and our administrator has voiced our concerns at a number of SLD forums.

I ask you to consider all the circumstances surrounding the good faith attempts of Maine, and other consortium filers, to meet SLD's requirements. The Federal E-rate program was established, in particular, to provide rural and poor school and libraries with technologically advanced services that would otherwise be impossible or difficult to obtain. Maine is seeking support for Internet access in the simplest way we know. Maine has sought few funds for more expensive internal connections and Maine telephone ratepayers pay more into this fund than they currently receive. In addition, the Maine Legislature has viewed citizen and student access as so important that it has authorized the creation of a "State E-rate" funding mechanism. Maine collects a charge on intrastate service and supplements the federal discount with a State E-rate contribution, which should result in schools and libraries receiving Internet access for free. We believe our state could be a model for the nation, as we were the first to connect every public library and school to the Internet. We ask that you not let problems with SLD computer systems and processing personnel create barriers to a state receiving a reasonable amount of funding, to fulfill the goals for which the Federal E-rate was created by Congress.

I appreciate your attention to our Request. If you have any questions, feel free to call me at (207) 287-1361 or the Commission's General Counsel, Joanne Steneck, at (207) 287-1390.

Sincerely,


Thomas Welch
Chairman, Maine Public
Utilities Commission

CERTIFICATE OF SERVICE

I do hereby certify that I have this 3rd day of February 2003, served all persons listed below with a copy of the foregoing attached Ex-Parte Letter by placing a true and correct copy of the same in the United States Mail, Postage prepaid, addressed to the parties listed below:

Marlene H. Dortch
Secretary
Federal Communications Commission
Room 222 Stop Code 1170
1919 M Street N.W.
Washington, D.C. 20554

Christopher Libertelli Legal Advisor to Chairman Powell
Federal Communications Commission
445 12th Street, SW. Suite TW-8B201
Washington, D.C. 20554

Mathew Brill, Legal Advisor to Commissioner Abernathy
Federal Communications Commission
445 12th Street, SW, Suite TW-8B204
Washington, D.C. 20554

Dan Gonzalez, Legal Advisor to Commissioner Martin
Federal Communications Commission
445 12th Street, SW, Suite TW-8B201
Washington, D.C. 20554

Jordan Goldstein, Legal Advisor to Commissioner Coops
Federal Communications Commission
445 12th Street, SW, Suite TW-8C302
Washington, D.C. 20554

Lisa Zaina, Legal Advisor to Commissioner Adelstein
Federal Communications Commission
445 12th Street, SW, Suite TW-8B115
Washington, D.C. 20554